those fixed in the franchise. *Com. of Va.* v. *Virginia-Western P. Co.*, P. U. R. 1918 F. 791, reviewing many cases and noting their seeming inconsistencies. See also *Jamestown* v. *Pa. Gas Co.*, 263 Fed. 437.

QUASI CONTRACT—PLAINTIFF'S SERVICES RESULTING IN GIFT TO DEFENDANT.—A county let to defendant a contract for construction of a drainage ditch. Under the statutes, the county engineer, with the consent of the auditor, might require extra work, not exceeding ten per cent of the bid. Defendant sublet the whole job to plaintiff, with a stipulation that it would pay plaintiff for extra work "required to be done by the engineer" 9½ cents per yard. The engineer, without the concurrence of the auditor, called for extra work in excess of ten per cent, and plaintiff did this work in ignorance of the engineer's want of authority. The county paid defendant for the extra work $3,152, which was in excess of the ten per cent limitation but considerably short of the value of the work, which, computed on the basis of plaintiff's contract, amounted to $5,589. *Held*, that defendant could not have enforced any payment by the county for the extra work (whether plaintiff could have recovered in quasi contract from the county was not discussed); that defendant's contract with plaintiff obligated defendant to pay only for extra work which the engineer should properly require and for which defendant was entitled to compensation; but that the whole amount paid to defendant for extra work should "in common justice" be paid over to plaintiff. *Seastrand* v. *Foley Co.*, 135 Minn. 5.

After the decision of the foregoing case, the legislature empowered, though it did not require, the county to pay for the extra work, and the county paid to defendant the sum of $4,307. Plaintiff brought another action, claiming only enough to make up the contract price for the extra work. *Held*, that the suit was not barred by the former adjudication because it was based on facts which transpired since the former decision; and that plaintiff was entitled to recover on principles of quasi contract. *Seastrand* v. *Foley Co.* (Minn., 1919), 175 N. W. 117.

These cases, as the court intimated, present a novel problem. In so far as they involve rendition of services in performance of the supposed requirements of a contract, the ground is familiar. Nor is there anything novel in the failure of the defense to make the point that plaintiff must rely on ignorance of law (if he had acted with knowledge of the law there would be but little equity in his case), for the monstrous dogma that everyone is presumed to know the law is fortunately not applied with logical thoroughness. Wherever there is something to mask the fact that the case is bottomed on mistake or ignorance of law, the objection is usually overlooked both by court and counsel. See WOODWARD, QUASI CONTRACTS, 94, 134. The point which appears to have been chiefly urged by the defense, and which turns on the features of the case which are really novel, is this: Since the plaintiff's services were not directly beneficial to defendant, and since they gave defendant no legal right to compensation, it cannot be said in a strict sense that defendant has received anything from plaintiff. This position finds some

support in several cases where, as between rival claimants of an obligation of a third person, the one not entitled having received payment, the rightful claimant was denied recovery from the other. *Seargeant* v. *Stryker,* 16 N. J. L. 464; *Butterworth* v. *Gould,* 41 N. Y. 450. *Contra, Claxton* v. *Kay,* 101 Ark. 350. Those cases are distinguished from the principal case in that the plaintiff still had his remedy against the obligor, and the defendant, barring the bogey mistake of law, was bound to make restitution to the obligor. But the court, in our case, met the argument in a much more satisfactory way by stamping it as too technical for this equitable form of action. There was an obvious causal relation between the plaintiff's services and the payment to defendant, and the plaintiff's equity is so strong and defendant's so weak that one wonders whether, if plaintiff had claimed the whole of the fund, he would not have succeeded.

RAILROADS—CROSSING ACCIDENTS—CARE REQUIRED OF AUTOMOBILE DRIVER—DUTY TO STOP, LOOK, AND LISTEN.—The plaintiff's automobile was struck by one of the defendant's trains at a grade crossing, whereby the plaintiff was injured, and now sues. The evidence showed that the train was exceeding the city ordinance speed limit in the city; that no warning signal had been given; that the electric gong was not ringing; that there was an obstructed view; that the plaintiff approached the crossing at the rate of four miles per hour; and that the plaintiff looked and listened, but did not come to a full stop. The defendant contended that the failure to stop made the plaintiff guilty of contributory negligence as a matter of law, and that the judgment should be affirmed for it, regardless of the errors made on the trial. *Held,* that it is "the duty of one about to cross a railroad track to look and listen, and sometimes to stop in order the better to see and hear, yet it is not always incumbent upon him to stop for that purpose; whether he should do so in a given case depends on the circumstances, and if it is doubtful the jury are the judges of it." *Monroe* v. *Chicago & A. Ry. Co.* (Mo., 1919), 219 S. W. 68.

The advent of the automobile as a means of travel and carriage has increased the number of railway crossing accidents and raised the question of the duty of an automobile driver in driving across railway crossings. However, the courts have been unable to agree on this duty. The United States Circuit Court of Appeals, Third Circuit, held that "the duty of an automobile driver approaching tracks where there is a restricted vision to stop, look, and listen, and to do so at a place where stopping, and where looking, and where listening will be effective, is a positive duty." *N. Y. C. & H. R. Ry. Co.* v. *Maidment,* 168 Fed. 21; *Brommer* v. *Pa. Ry. Co.,* 179 Fed. 577. This strict rule has been approved and followed in many states. *Chase* v. *N. Y. C. & H. R. Ry. Co.,* 208 Mass. 137; *Craig* v. *Pa. Ry. Co.,* 243 Pa. 455; *Callery* v. *Ry. Co.,* 139 La. 765; *Thompson* v. *Ry. Co.,* 31 Cal. App. 567; *Wehe* v. *Ry. Co.,* 97 Kan. 794; *Ry. Co.* v. *Zell,* 118 Va. 755. The two Federal cases appeared in 1909 and 1910, respectively, at a time when automobiles first began to be used extensively for business and pleasure. The